proper tribunal, instead of the Working Committee, then the defendant is bound to justify his action and state the grounds upon which he came to his decision. If however, the plaintiff must pursue his appeal in the domestic tribunal, and he elects, in contravention of the rules, not to do so, I do not think that he can thereby compel the defendant to justify his action in open Court, and to divulge reasons which may be most cogent, but detrimental to the most vital interests of the Congress, if disclosed to the general public. No party can derive any advantage from any default by another if such default is the direct consequence of his own wrong. I have held that the proper appeal tribunal for the plaintiff under Rule 28 is the Working Committee, and I am not prepared to say that if the defendant was mute before this Court, it must be deemed that he would necessarily be unable to justify his action to the Working Committee. I am of opinion that no *mala fides* has been established: the plaintiff's belief is not sufficient.

There remains only two material points to which I would advert. One is that, in this case the question whether or not the plaintiff's conduct was detrimental to the M.I.C. is not a question of law, but a question of fact, or of opinion, or of both. Speaking of domestic tribunals, Denning L.J. (as he then was) in *Lee* v. *The Showmen's Guild of Great Britain* said: "They "(the parties)" can, indeed make the tribunal the final arbiters on questions of fact", although they could not make it the final arbiter on questions of law. If the Working Committee are made the final arbiters of fact under Rule 28, then I do not think the facts of this case justify the Court intervening and taking the appeal on a question of fact out of their hands. In questions of ethics the Court will not interfere: (see Romer L.J. at 350 in *Lee* v. *Showmen's Guild*) and the question whether conduct of a member is detrimental to the interests of an association comes within that province.

The other point is whether this case is one in which the Court will interfere. I respectfully agree with the passages I have quoted from the judgments of Brett L.J. in *Dawkins* v. *Antrobus* and Denning L.J. in *Lee* v. *Showmen's Guild*. This case is one in which I have no hesitation in saying that the designated domestic tribunal is far more competent to determine the question than any Court in the land.

For the reasons I have given I dismiss this action with costs.

Action dismissed.

Solicitors: *R. R. Chelliah; Dato E. E. C. Thuraisingham.*

LOW KIM YAN v. TAY GUAT HIAN & ORS.

[C. A. (Thomson C.J., Hill and Good JJ. A.) May 16, 1960]

[J. B. — F.M. Civil Appeal No. 40 of 1959]

Damages — Loss of support arising from death of husband — Source of income irrelevant — Whether payments from father-in-law can be taken into account in assessing damages.

Maintenance — Legal obligation of husband.

This was an appeal against an award for damages which arose from the negligence of the appellant in driving a motor vehicle whereby the husband of the 1st respondent met his death. Prior to his death the deceased was a University student and he was in fact living on payments made to him by his father out of which he made certain payments to his wife for the support of herself and the children. Since losing the husband the 1st respondent had been receiving payments from her father-in-law. It was urged for the appellant that these should be taken into account in assessing the damages.

Held: (1) the source of the husband's income was irrelevant to the proceedings;

(2) when the deceased married the 1st respondent he incurred a legal obligation to maintain her and any children of the marriage and she acquired a legal right to be maintained by him and it is immaterial where he obtained the money to discharge his legal duty;

(3) there is no justification for the Court to take into account in assessing the damages the fact that since her husband's death the 1st respondent had been receiving payments from her father-in-law.

Cases referred to:—

(1) *Heatley* v. *Steel Co. of Wales Ltd.*, [1953] 1 All E.R. 489, 490.

(2) *Scott* v. *Musial* [1959] 3 W.L.R. 437, 441.

(3) *Baker* v. *Dalgleish Steam Shipping Co.* [1922] 1 K.B. 361, 371.

COURT OF APPEAL.

D. G. Rawson for appellant.

D. H. Murphy for respondents.

Thomson C.J. (delivering oral judgment): This appeal is against a judgment of Mr. Justice Neal whereby he awarded sums amounting in all to $35,000 for loss of support and $1,500 for funeral expenses to the first plaintiff who sued on her own behalf and for her two infant sons under the provisions of the Civil Law Ordinance.

The damages flowed from the negligence of the defendant in driving a motor vehicle whereby the husband of the first plaintiff met his death.

Prior to his death the deceased, who was the son of a fairly wealthy man, was a student pursuing his studies at some Institution in Singapore and he was in fact living on payments made to him by his father out of which he made certain payments to his wife for the support of herself and the children. I should say here that in my view the source of the husband's income was

irrelevant to the present proceedings. When the deceased married the first plaintiff he incurred a legal obligation to maintain her and any children of the marriage and she acquired a legal right to be maintained by him and it is immaterial where he obtained the money to discharge his legal duty. It is immaterial whether he got it by working for it or whether he got it from his father or whether he got it in some other way. After all if he had not got it from his father he would have had to go and work for a living instead of spending his time at the University. The point is that in fact the husband was maintaining the wife and children and as a result of his death they have lost that maintenance.

To my mind it is also beside the point to say that a charitable father-in-law and godfather has provided for them and will possibly go on providing for them if they are destitute. The real point is there is no legal obligation on him to provide. The widow has no legal claim on him as she had on her husband. What she has lost is the support she had from her husband to which she was legally entitled. She is, then, clearly entitled to compensation for that loss of support as are the young children.

It was said by Lord Goddard in the case of *Heatley* v. *Steel Co. of Wales, Ltd.*[1]:—

> "The court has, in the best way it can, to find a sum of money which it thinks will fairly compensate the family. One Judge may arrive at it in one way and another Judge in another."

Again, it was said by Morris L.J. in the case of *Scott* v. *Musial*[2]:—

> "if three judges of the Court of Appeal consider that the amount of general damages that they would have awarded would have been a figure different from that decided by the trial judge, they will not, for that reason alone, give preference to their own figure; they will only do so if satisfied that the judge has acted on a wrong principle of law or has misapprehended the facts, or has, for those or other reasons, made a wholly erroneous estimate of the damage suffered."

Now, as I said yesterday there is a very very great element of judgment called for in assessing damages in this type of case. Perhaps this type of case calls for the exercise of judgment more than do other types of case where the damages can be fairly precisely calculated.

In the present case I think had I been the trial Judge I would have awarded a rather lower sum than was awarded but the difference between my own view of what should have been awarded and that of Mr. Justice Neal which he has stated is not so great as to justify me in saying that this Court should interfere.

There is one minor point. Since losing the husband the first plaintiff has been receiving payments from her father-in-law. It was urged upon us that these should be taken into account in assessing the damages. For myself I can find nothing to justify such a view. There is not a scintilla of legal obligation on a father-in-law to maintain his daughter-in-law and grandchildren and the fact that he has taken upon himself a moral obligation which he may cease to discharge at any time does not in my view justify us in taking these payments into account. No doubt the money he has paid will be refunded. That is no concern of the Court. And it does seem an extraordinary proposition that a wrongdoer who has to pay for his wrongdoing (and that is what we are concerned here) should derive an advantage from the charitable disposition of some other person.

For myself I would dismiss the appeal with costs.

Hill J. A. (delivering oral judgment): I would, for the reasons as stated, also dismiss the appeal with costs.

Good J. A. (delivering oral judgment): I am of the same opinion.

So far as the widow's entitlement is concerned, I would like to refer to a sentence in the judgment of Scrutton L.J. in *Baker* v. *Dalgleish Steam Shipping Co.*[3] to which we were referred yesterday. That was a claim for compensation under Lord Campbell's Act and Scrutton L.J. referring to the widow's claim said:

> "She is entitled to claim on the one hand any pecuniary benefit which it is reasonably probable she would have received if the deceased had remained alive."

On the evidence in the present case it is abundantly clear that it was more than reasonably probable, it was a virtual certainty, that the voluntary payments by her father-in-law would have continued if her husband had lived. I therefore hold the view that she is entitled to be compensated on that basis.

So far as the quantum is concerned I respectfully agree with the opinions of My Lords and I have nothing to add.

I, too, would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.; Murphy & Dunbar.*

LIM KIM SWEE v. TAN MENG SAN

[C. A. (Thomson C.J., Hill and Good JJ. A.) June 17, 1960]

[K. L. — F.M. Civil Appeal No. 27 of 1960]

Contract — Agreement to sell land under charge — Purchaser to pay or settle with chargee — Condition precedent — Whether purchaser must have actually performed his part of the contract to be entitled to sue for specific performance.

Practice and Procedure — No cause of action when writ was issued — Whether writ could be amended after payment to chargee by purchaser so as to treat that payment as something that had been done before writ was issued.

The plaintiff agreed to buy and the defendant agreed to sell a piece of land held under a certificate of title in the Mukim of Ampangan, Seremban. The consideration for the defendant's promise to sell was in two parts. One part was the payment of some money to B. Kaher Singh and the other part was the satisfaction of a debt owed by the defendant to one Coelho who at the time